

AMENDED IN SENATE JUNE 15, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 322**

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**Introduced by Assembly Member Silva**

February 18, 2009

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An act to amend Sections 171b, 171.5, 245.5, 626.10, 11160, and 12650 of the Penal Code, relating to ~~electronic control devices~~ *less lethal weapons*.

LEGISLATIVE COUNSEL'S DIGEST

AB 322, as amended, Silva. ~~Electronic control devices.~~ *Less lethal weapons.*

Existing law generally regulates dangerous weapons, including stun guns and tasers, and establishes offenses committed with stun guns and tasers.

This bill would replace the term “taser” with ~~“electronic control device”~~ “*less lethal weapon*” for these purposes.

By ~~changing~~ *expanding* the ~~definition~~ *scope* of existing crimes, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

SECTION 1. Section 171b of the Penal Code is amended to read:

171b. (a) Any person who brings or possesses within any state or local public building or at any meeting required to be open to the public pursuant to Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, the Government Code, any of the following is guilty of a public offense punishable by imprisonment in a county jail for not more than one year, or in the state prison:

(1) Any firearm.

(2) Any deadly weapon described in Section 653k or 12020.

(3) Any knife with a blade length in excess of four inches, the blade of which is fixed or is capable of being fixed in an unguarded position by the use of one or two hands.

(4) Any unauthorized tear gas weapon.

(5) Any ~~electronic control device~~ *less lethal weapon, as defined in Section 12601*, or stun gun, as defined in Section 244.5.

(6) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO<sub>2</sub> pressure, or spring action, or any spot marker gun or paint gun.

(b) Subdivision (a) shall not apply to, or affect, any of the following:

(1) A person who possesses weapons in, or transports weapons into, a court of law to be used as evidence.

(2) (A) A duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace officer with authorization to carry concealed weapons as described in subdivision (a) of Section 12027, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person summoned by any of these officers to assist in making arrests or preserving the peace while he or she is actually engaged in assisting the officer.

(B) Notwithstanding subparagraph (A), subdivision (a) shall apply to any person who brings or possesses any weapon specified therein within any courtroom if he or she is a party to an action pending before the court.

1 (3) A person holding a valid license to carry the firearm pursuant  
2 to Article 3 (commencing with Section 12050) of Chapter 1 of  
3 Title 2 of Part 4.

4 (4) A person who has permission to possess that weapon granted  
5 in writing by a duly authorized official who is in charge of the  
6 security of the state or local government building.

7 (5) A person who lawfully resides in, lawfully owns, or is in  
8 lawful possession of, that building with respect to those portions  
9 of the building that are not owned or leased by the state or local  
10 government.

11 (6) A person licensed or registered in accordance with, and  
12 acting within the course and scope of, Chapter 11.5 (commencing  
13 with Section 7512) or Chapter 11.6 (commencing with Section  
14 7590) of Division 3 of the Business and Professions Code who  
15 has been hired by the owner or manager of the building if the  
16 person has permission pursuant to paragraph (5).

17 (7) (A) A person who, for the purpose of sale or trade, brings  
18 any weapon that may otherwise be lawfully transferred, into a gun  
19 show conducted pursuant to Sections 12071.1 and 12071.4.

20 (B) A person who, for purposes of an authorized public  
21 exhibition, brings any weapon that may otherwise be lawfully  
22 possessed, into a gun show conducted pursuant to Sections 12071.1  
23 and 12071.4.

24 (c) As used in this section, “state or local public building” means  
25 a building that meets all of the following criteria:

26 (1) It is a building or part of a building owned or leased by the  
27 state or local government, if state or local public employees are  
28 regularly present for the purposes of performing their official  
29 duties. A state or local public building includes, but is not limited  
30 to, a building that contains a courtroom.

31 (2) It is not a building or facility, or a part thereof, that is referred  
32 to in Section 171c, 171d, 626.9, 626.95, or 626.10 of this code, or  
33 in Section 18544 of the Elections Code.

34 (3) It is a building not regularly used, and not intended to be  
35 used, by state or local employees as a place of residence.

36 SEC. 2. Section 171.5 of the Penal Code is amended to read:

37 171.5. (a) For purposes of this section:

38 (1) “Airport” means an airport, with a secured area, that  
39 regularly serves an air carrier holding a certificate issued by the  
40 United States Secretary of Transportation.

(2) “Passenger vessel terminal” means only that portion of a harbor or port facility, as described in Section 105.105(a)(2) of Title 33 of the Code of Federal Regulations, with a secured area that regularly serves scheduled commuter or passenger operations.

(3) “Sterile area” means a portion of an airport defined in the airport security program to which access generally is controlled through the screening of persons and property, as specified in Section 1540.5 of Title 49 of the Code of Federal Regulations, or a portion of any passenger vessel terminal to which, pursuant to the requirements set forth in Sections 105.255(a)(1), 105.255(c)(1), and 105.260(a) of Title 33 of the Code of Federal Regulations, access is generally controlled in a manner consistent with the passenger vessel terminal’s security plan and the MARSEC level in effect at the time.

(b) It is unlawful for any person to knowingly possess, within any sterile area of an airport or a passenger vessel terminal, any of the items listed in subdivision (c).

(c) The following items are unlawful to possess as provided in subdivision (b):

(1) Any firearm.

(2) Any knife with a blade length in excess of four inches, the blade of which is fixed, or is capable of being fixed, in an unguarded position by the use of one or two hands.

(3) Any box cutter or straight razor.

(4) Any metal military practice hand grenade.

(5) Any metal replica hand grenade.

(6) Any plastic replica hand grenade.

(7) Any imitation firearm as defined in Section 417.4.

(8) Any frame, receiver, barrel, or magazine of a firearm.

(9) Any unauthorized tear gas weapon.

(10) ~~Any electronic control device~~ *less lethal weapon, as defined in Section 12601*, or stun gun, as defined in Section 244.5.

(11) Any instrument that expels a metallic projectile, such as a BB or pellet, through the force of air pressure, CO<sub>2</sub> pressure, or spring action, or any spot marker gun or paint gun.

(12) Any ammunition as defined in Section 12316.

(d) Subdivision (b) shall not apply to, or affect, any of the following:

(1) A duly appointed peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a retired peace

1 officer with authorization to carry concealed weapons as described  
2 in subdivision (a) of Section 12027, a full-time paid peace officer  
3 of another state or the federal government who is carrying out  
4 official duties while in California, or any person summoned by  
5 any of these officers to assist in making arrests or preserving the  
6 peace while he or she is actually engaged in assisting the officer.

7 (2) A person who has authorization to possess a weapon  
8 specified in subdivision (c), granted in writing by an airport  
9 security coordinator who is designated as specified in Section  
10 1542.3 of Title 49 of the Code of Federal Regulations, and who is  
11 responsible for the security of the airport.

12 (3) A person, including an employee of a licensed contract guard  
13 service, who has authorization to possess a weapon specified in  
14 subdivision (c) granted in writing by a person discharging the  
15 duties of Facility Security Officer or Company Security Officer  
16 pursuant to an approved United States Coast Guard facility security  
17 plan, and who is responsible for the security of the passenger vessel  
18 terminal.

19 (e) A violation of this section is punishable by imprisonment  
20 in a county jail for a period not exceeding six months, or by a fine  
21 not exceeding one thousand dollars (\$1,000), or by both that fine  
22 and imprisonment.

23 (f) The provisions of this section are cumulative, and shall not  
24 be construed as restricting the application of any other law.  
25 However, an act or omission that is punishable in different ways  
26 by this and any other provision of law shall not be punished under  
27 more than one provision.

28 (g) Nothing in this section is intended to affect existing state or  
29 federal law regarding the transportation of firearms on airplanes  
30 in checked luggage, or the possession of the items listed in  
31 subdivision (c) in areas that are not “sterile areas.”

32 SEC. 3. Section 245.5 of the Penal Code is amended to read:

33 245.5. (a) Every person who commits an assault with a deadly  
34 weapon or instrument, other than a firearm, or by any means likely  
35 to produce great bodily injury upon the person of a school  
36 employee, and who knows or reasonably should know that the  
37 victim is a school employee engaged in the performance of his or  
38 her duties, when that school employee is engaged in the  
39 performance of his or her duties, shall be punished by

1 imprisonment in the state prison for three, four, or five years, or  
2 in a county jail not exceeding one year.

3 (b) Every person who commits an assault with a firearm upon  
4 the person of a school employee, and who knows or reasonably  
5 should know that the victim is a school employee engaged in the  
6 performance of his or her duties, when the school employee is  
7 engaged in the performance of his or her duties, shall be punished  
8 by imprisonment in the state prison for four, six, or eight years, or  
9 in a county jail for not less than six months and not exceeding one  
10 year.

11 (c) Every person who commits an assault upon the person of a  
12 school employee with a stun gun ~~or electronic control device, as~~  
13 *defined in Section 244.5, or a less lethal weapon, as defined in*  
14 *Section 12601*, and who knows or reasonably should know that  
15 the person is a school employee engaged in the performance of  
16 his or her duties, when the school employee is engaged in the  
17 performance of his or her duties, shall be punished by  
18 imprisonment in a county jail for a term not exceeding one year  
19 or by imprisonment in the state prison for two, three, or four years.

20 This subdivision shall not be construed to preclude or in any  
21 way limit the applicability of Section 245 in any criminal  
22 prosecution.

23 (d) As used in the section, “school employee” means any person  
24 employed as a permanent or probationary certificated or classified  
25 employee of a school district on a part-time or full-time basis,  
26 including a substitute teacher. “School employee,” as used in this  
27 section, also includes a student teacher, or a school board member.  
28 “School,” as used in this section, has the same meaning as that  
29 term is defined in Section 626.

30 SEC. 4. Section 626.10 of the Penal Code is amended to read:

31 626.10. (a) Any person, except a duly appointed peace officer  
32 as defined in Chapter 4.5 (commencing with Section 830) of Title  
33 3 of Part 2, a full-time paid peace officer of another state or the  
34 federal government who is carrying out official duties while in  
35 this state, a person summoned by any officer to assist in making  
36 arrests or preserving the peace while the person is actually engaged  
37 in assisting any officer, or a member of the military forces of this  
38 state or the United States who is engaged in the performance of  
39 his or her duties, who brings or possesses any dirk, dagger, ice  
40 pick, knife having a blade longer than 2 ½ inches, folding knife

1 with a blade that locks into place, a razor with an unguarded blade,  
2 ~~an electronic control device~~ *a less lethal weapon, as defined in*  
3 *Section 12601*, or a stun gun, as defined in subdivision (a) of  
4 Section 244.5, any instrument that expels a metallic projectile such  
5 as a BB or a pellet, through the force of air pressure, CO<sub>2</sub> pressure,  
6 or spring action, or any spot marker gun, upon the grounds of, or  
7 within, any public or private school providing instruction in  
8 kindergarten or any of grades 1 to 12, inclusive, is guilty of a public  
9 offense, punishable by imprisonment in a county jail not exceeding  
10 one year, or by imprisonment in the state prison.

11 (b) Any person, except a duly appointed peace officer as defined  
12 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part  
13 2, a full-time paid peace officer of another state or the federal  
14 government who is carrying out official duties while in this state,  
15 a person summoned by any officer to assist in making arrests or  
16 preserving the peace while the person is actually engaged in  
17 assisting any officer, or a member of the military forces of this  
18 state or the United States who is engaged in the performance of  
19 his or her duties, who brings or possesses any dirk, dagger, ice  
20 pick, or knife having a fixed blade longer than 2½ inches upon  
21 the grounds of, or within, any private university, the University of  
22 California, the California State University, or the California  
23 Community Colleges is guilty of a public offense, punishable by  
24 imprisonment in a county jail not exceeding one year, or by  
25 imprisonment in the state prison.

26 (c) Subdivisions (a) and (b) do not apply to any person who  
27 brings or possesses a knife having a blade longer than 2½ inches  
28 or a razor with an unguarded blade upon the grounds of, or within,  
29 a public or private school providing instruction in kindergarten or  
30 any of grades 1 to 12, inclusive, or any private university, state  
31 university, or community college at the direction of a faculty  
32 member of the private university, state university, or community  
33 college, or a certificated or classified employee of the school for  
34 use in a private university, state university, community college,  
35 or school-sponsored activity or class.

36 (d) Subdivisions (a) and (b) do not apply to any person who  
37 brings or possesses an ice pick, a knife having a blade longer than  
38 2½ inches, or a razor with an unguarded blade upon the grounds  
39 of, or within, a public or private school providing instruction in  
40 kindergarten or any of grades 1 to 12, inclusive, or any private

1 university, state university, or community college for a lawful  
2 purpose within the scope of the person's employment.

3 (e) Subdivision (b) does not apply to any person who brings or  
4 possesses an ice pick or a knife having a fixed blade longer than  
5 2½ inches upon the grounds of, or within, any private university,  
6 state university, or community college for lawful use in or around  
7 a residence or residential facility located upon those grounds or  
8 for lawful use in food preparation or consumption.

9 (f) Subdivision (a) does not apply to any person who brings an  
10 instrument that expels a metallic projectile such as a BB or a pellet,  
11 through the force of air pressure, CO<sub>2</sub> pressure, or spring action,  
12 or any spot marker gun upon the grounds of, or within, a public  
13 or private school providing instruction in kindergarten or any of  
14 grades 1 to 12, inclusive, if the person has the written permission  
15 of the school principal or his or her designee.

16 (g) Any certificated or classified employee or school peace  
17 officer of a public or private school providing instruction in  
18 kindergarten or any of grades 1 to 12, inclusive, may seize any of  
19 the weapons described in subdivision (a), and any certificated or  
20 classified employee or school peace officer of any private  
21 university, state university, or community college may seize any  
22 of the weapons described in subdivision (b), from the possession  
23 of any person upon the grounds of, or within, the school if he or  
24 she knows, or has reasonable cause to know, the person is  
25 prohibited from bringing or possessing the weapon upon the  
26 grounds of, or within, the school.

27 (h) As used in this section, "dirk" or "dagger" means a knife or  
28 other instrument with or without a handguard that is capable of  
29 ready use as a stabbing weapon that may inflict great bodily injury  
30 or death.

31 (i) Any person who, without the written permission of the  
32 college or university president or chancellor or his or her designee,  
33 brings or possesses a less lethal weapon, as defined in Section  
34 12601, or a stun gun, as defined in Section 12650, upon the grounds  
35 of or within, a public or private college or university campus is  
36 guilty of a misdemeanor.

37 SEC. 5. Section 11160 of the Penal Code is amended to read:

38 11160. (a) Any health practitioner employed in a health  
39 facility, clinic, physician's office, local or state public health  
40 department, or a clinic or other type of facility operated by a local



1 or state public health department who, in his or her professional  
2 capacity or within the scope of his or her employment, provides  
3 medical services for a physical condition to a patient whom he or  
4 she knows or reasonably suspects is a person described as follows,  
5 shall immediately make a report in accordance with subdivision  
6 (b):

7 (1) Any person suffering from any wound or other physical  
8 injury inflicted by his or her own act or inflicted by another where  
9 the injury is by means of a firearm.

10 (2) Any person suffering from any wound or other physical  
11 injury inflicted upon the person where the injury is the result of  
12 assaultive or abusive conduct.

13 (b) Any health practitioner employed in a health facility, clinic,  
14 physician's office, local or state public health department, or a  
15 clinic or other type of facility operated by a local or state public  
16 health department shall make a report regarding persons described  
17 in subdivision (a) to a local law enforcement agency as follows:

18 (1) A report by telephone shall be made immediately or as soon  
19 as practically possible.

20 (2) A written report shall be prepared on the standard form  
21 developed in compliance with paragraph (4) of this subdivision,  
22 and Section 11160.2, and adopted by the agency or agencies  
23 designated by the Director of Finance pursuant to Section 13820,  
24 or on a form developed and adopted by another state agency that  
25 otherwise fulfills the requirements of the standard form. The  
26 completed form shall be sent to a local law enforcement agency  
27 within two working days of receiving the information regarding  
28 the person.

29 (3) A local law enforcement agency shall be notified and a  
30 written report shall be prepared and sent pursuant to paragraphs  
31 (1) and (2) even if the person who suffered the wound, other injury,  
32 or assaultive or abusive conduct has expired, regardless of whether  
33 or not the wound, other injury, or assaultive or abusive conduct  
34 was a factor contributing to the death, and even if the evidence of  
35 the conduct of the perpetrator of the wound, other injury, or  
36 assaultive or abusive conduct was discovered during an autopsy.

37 (4) The report shall include, but shall not be limited to, the  
38 following:

39 (A) The name of the injured person, if known.

40 (B) The injured person's whereabouts.

1 (C) The character and extent of the person's injuries.

2 (D) The identity of any person the injured person alleges  
3 inflicted the wound, other injury, or assaultive or abusive conduct  
4 upon the injured person.

5 (c) For the purposes of this section, "injury" shall not include  
6 any psychological or physical condition brought about solely  
7 through the voluntary administration of a narcotic or restricted  
8 dangerous drug.

9 (d) For the purposes of this section, "assaultive or abusive  
10 conduct" shall include any of the following offenses:

11 (1) Murder, in violation of Section 187.

12 (2) Manslaughter, in violation of Section 192 or 192.5.

13 (3) Mayhem, in violation of Section 203.

14 (4) Aggravated mayhem, in violation of Section 205.

15 (5) Torture, in violation of Section 206.

16 (6) Assault with intent to commit mayhem, rape, sodomy, or  
17 oral copulation, in violation of Section 220.

18 (7) Administering controlled substances or anesthetic to aid in  
19 commission of a felony, in violation of Section 222.

20 (8) Battery, in violation of Section 242.

21 (9) Sexual battery, in violation of Section 243.4.

22 (10) Incest, in violation of Section 285.

23 (11) Throwing any vitriol, corrosive acid, or caustic chemical  
24 with intent to injure or disfigure, in violation of Section 244.

25 (12) Assault with a stun gun or ~~electronic control device~~ *less*  
26 *lethal weapon*, in violation of Section 244.5.

27 (13) Assault with a deadly weapon, firearm, assault weapon, or  
28 machinegun, or by means likely to produce great bodily injury, in  
29 violation of Section 245.

30 (14) Rape, in violation of Section 261.

31 (15) Spousal rape, in violation of Section 262.

32 (16) Procuring any female to have sex with another man, in  
33 violation of Section 266, 266a, 266b, or 266c.

34 (17) Child abuse or endangerment, in violation of Section 273a  
35 or 273d.

36 (18) Abuse of spouse or cohabitant, in violation of Section  
37 273.5.

38 (19) Sodomy, in violation of Section 286.

39 (20) Lewd and lascivious acts with a child, in violation of  
40 Section 288.

1 (21) Oral copulation, in violation of Section 288a.

2 (22) Sexual penetration, in violation of Section 289.

3 (23) Elder abuse, in violation of Section 368.

4 (24) An attempt to commit any crime specified in paragraphs  
5 (1) to (23), inclusive.

6 (e) When two or more persons who are required to report are  
7 present and jointly have knowledge of a known or suspected  
8 instance of violence that is required to be reported pursuant to this  
9 section, and when there is an agreement among these persons to  
10 report as a team, the team may select by mutual agreement a  
11 member of the team to make a report by telephone and a single  
12 written report, as required by subdivision (b). The written report  
13 shall be signed by the selected member of the reporting team. Any  
14 member who has knowledge that the member designated to report  
15 has failed to do so shall thereafter make the report.

16 (f) The reporting duties under this section are individual, except  
17 as provided in subdivision (e).

18 (g) No supervisor or administrator shall impede or inhibit the  
19 reporting duties required under this section and no person making  
20 a report pursuant to this section shall be subject to any sanction  
21 for making the report. However, internal procedures to facilitate  
22 reporting and apprise supervisors and administrators of reports  
23 may be established, except that these procedures shall not be  
24 inconsistent with this article. The internal procedures shall not  
25 require any employee required to make a report under this article  
26 to disclose his or her identity to the employer.

27 (h) For the purposes of this section, it is the Legislature's intent  
28 to avoid duplication of information.

29 SEC. 6. Section 12650 of the Penal Code is amended to read:

30 12650. "Stun gun" as used in this chapter shall include any  
31 item, ~~except an electronic control device~~ *a less lethal weapon, as*  
32 *defined in Section 12601*, used or intended to be used as either an  
33 offensive or defensive weapon capable of temporarily immobilizing  
34 a person by the infliction of an electrical charge.

35 SEC. 7. No reimbursement is required by this act pursuant to  
36 Section 6 of Article XIII B of the California Constitution because  
37 the only costs that may be incurred by a local agency or school  
38 district will be incurred because this act creates a new crime or  
39 infraction, eliminates a crime or infraction, or changes the penalty  
40 for a crime or infraction, within the meaning of Section 17556 of

- 1 the Government Code, or changes the definition of a crime within
- 2 the meaning of Section 6 of Article XIII B of the California
- 3 Constitution.

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